

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EMILY ELYSE BRENNAN,

Plaintiff,

v.

NANCY A. BERRYHILL
(PREVIOUSLY COLVIN),
Acting Commissioner of Social
Security,¹

Defendant.

No. 2:16-CV-062-RHW

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 13 & 18. Plaintiff Emily Elyse Brennan brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's final decision, which denied her application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C. § 1381-1383F. After reviewing the

¹ Nancy A. Berryhill became the Acting Commissioner of Social Security on January 20, 2017. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is substituted for Carolyn W. Colvin as the defendant in this suit. No further action need be taken to continue this suit. 42 U.S.C. § 405(g).

1 administrative record and briefs filed by the parties, the Court is now fully
2 informed. For the reasons set forth below, the Court **GRANTS** Defendant's
3 Motion for Summary Judgment.

4 **I. Jurisdiction**

5 Ms. Brennan filed her application for Supplemental Security Income under
6 Title XVI on April 11, 2012. AR 204-08. Her alleged onset date is December 1,
7 2008. AR 205. Her application was initially denied on July 16, 2012, AR 90-104,
8 and on reconsideration on October 18, 2012, AR 105-119.

9 Administrative Law Judge ("ALJ") Caroline Siderius held a hearing on
10 March 26, 2014, AR 42-63, and a supplemental hearing on July 29, 2014, AR 64-
11 89. On September 25, 2014, the ALJ issued a decision finding Ms. Brennan
12 ineligible for disability benefits under Title XVI. AR 21-37. The Appeals Council
13 denied Ms. Brennan's request for review on January 19, 2016, AR 1-5, making the
14 ALJ's ruling the "final decision" of the Commissioner.

15 Ms. Brennan timely filed the present action challenging the denial of
16 benefits on March 11, 2016. ECF No. 3. Accordingly, Ms. Brennan's claims are
17 properly before this Court pursuant to 42 U.S.C. § 405(g).

18 **II. Sequential Evaluation Process**

19 The Social Security Act defines disability as the "inability to engage in any
20 substantial gainful activity by reason of any medically determinable physical or

1 mental impairment which can be expected to result in death or which has lasted or
2 can be expected to last for a continuous period of not less than twelve months.” 42
3 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be
4 under a disability only if the claimant’s impairments are of such severity that the
5 claimant is not only unable to do his previous work, but cannot, considering
6 claimant's age, education, and work experience, engage in any other substantial
7 gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A) &
8 1382c(a)(3)(B).

9 The Commissioner has established a five-step sequential evaluation process
10 for determining whether a claimant is disabled within the meaning of the Social
11 Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v.*
12 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

13 Step one inquires whether the claimant is presently engaged in “substantial
14 gainful activity.” 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful
15 activity is defined as significant physical or mental activities done or usually done
16 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in
17 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§
18 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

19 Step two asks whether the claimant has a severe impairment, or combination
20 of impairments, that significantly limits the claimant’s physical or mental ability to

1 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe
2 impairment is one that has lasted or is expected to last for at least twelve months,
3 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &
4 416.908-09. If the claimant does not have a severe impairment, or combination of
5 impairments, the disability claim is denied, and no further evaluative steps are
6 required. Otherwise, the evaluation proceeds to the third step.

7 Step three involves a determination of whether any of the claimant's severe
8 impairments "meets or equals" one of the listed impairments acknowledged by the
9 Commissioner to be sufficiently severe as to preclude substantial gainful activity.
10 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;
11 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or
12 equals one of the listed impairments, the claimant is *per se* disabled and qualifies
13 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to
14 the fourth step.

15 Step four examines whether the claimant's residual functional capacity
16 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f)
17 & 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant
18 is not entitled to disability benefits and the inquiry ends. *Id.*

19 Step five shifts the burden to the Commissioner to prove that the claimant is
20 able to perform other work in the national economy, taking into account the

1 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),
2 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this
3 burden, the Commissioner must establish that (1) the claimant is capable of
4 performing other work; and (2) such work exists in "significant numbers in the
5 national economy." 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,
6 676 F.3d 1203, 1206 (9th Cir. 2012).

7 **III. Standard of Review**

8 A district court's review of a final decision of the Commissioner is governed
9 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the
10 Commissioner's decision will be disturbed "only if it is not supported by
11 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1144,
12 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means "more than
13 a mere scintilla but less than a preponderance; it is such relevant evidence as a
14 reasonable mind might accept as adequate to support a conclusion." *Sandgathe v.*
15 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d
16 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining
17 whether the Commissioner's findings are supported by substantial evidence, "a
18 reviewing court must consider the entire record as a whole and may not affirm
19 simply by isolating a specific quantum of supporting evidence." *Robbins v. Soc.*

1 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879
2 F.2d 498, 501 (9th Cir. 1989)).

3 In reviewing a denial of benefits, a district court may not substitute its
4 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
5 1992). If the evidence in the record “is susceptible to more than one rational
6 interpretation, [the court] must uphold the ALJ's findings if they are supported by
7 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,
8 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
9 2002) (if the “evidence is susceptible to more than one rational interpretation, one
10 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,
11 a district court “may not reverse an ALJ's decision on account of an error that is
12 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is
13 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.
14 The burden of showing that an error is harmful generally falls upon the party
15 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

16 IV. Statement of Facts

17 Emily Brennan was born in 1989. AR 36. She has less than a high school
18 education, but she is able to communicate in English. *Id.* She has previous work
19 experience as a cashier. *Id.*

1 Ms. Brennan presents with physical and mental impairments. She has a long
2 history of pelvic and lower abdominal pain, and she has undergone multiple
3 laparoscopic procedures to address this. AR 23-30. She has also a history of
4 migraine headaches and self-reported seizure activity. *Id.* In addition, she struggles
5 with anxiety, depression, and post-traumatic stress disorder. *Id.* Due to her physical
6 impairments, she has been on multiple medications for pain, including marijuana.
7 *Id.*; AR 32.

8 V. The ALJ's Findings

9 The ALJ determined that Ms. Brennan was not under a disability within the
10 meaning of the Act since April 11, 2012, the date her application was filed. AR 37.

11 **At step one**, the ALJ found that Ms. Brennan had not engaged in substantial
12 gainful activity since April 11, 2012, her application date (citing 20 C.F.R. §
13 416.971 *et seq.*). AR 23.

14 **At step two**, the ALJ found Ms. Brennan had the following severe
15 impairments: endometriosis; migraines; depressive disorder; and anxiety disorder
16 with self-reported panic (citing 20 C.F.R. § 416.920(c)). AR 23-30.

17 **At step three**, the ALJ found that Ms. Brennan did not have an impairment
18 or combination of impairments that meets or medically equals the severity of one
19 of the listed impairments in 20 C.F.R. §§ 404, Subpt. P, App. 1. AR 30-31.

1 At **step four**, the ALJ found Ms. Brennan had the following residual
2 functional capacity: She can “perform light work as defined in 20 CFR
3 416.967(b). She can lift 20 pounds occasionally and 10 pounds frequently. She can
4 sit up to 6 hours in an 8-hour day and stand/walk up to 6 hours in an 8-hour day
5 with a sit/stand option. She can occasionally kneel or crawl. She should avoid
6 hazards such as unprotected heights and work around heavy machinery. She is
7 capable of simple, repetitive tasks with only ordinary production requirements. She
8 is capable of superficial contact with the general public and occasional contact
9 with coworkers.” AR 31.

10 The ALJ determined that Ms. Brennan is unable to perform her past relevant
11 work as a cashier. AR 35-36.

12 At **step five**, the ALJ found that in light of her age, education, work
13 experience, and residual functional capacity, there are also other jobs that exist in
14 significant numbers in the national economy that Ms. Brennan can perform. AR
15 36-37. These include small parts assembler and hand packager. *Id.* The ALJ
16 consulted a vocational expert in making this determination. *Id.*

17 VI. Issues for Review

18 Ms. Brennan argues that the Commissioner’s decision is not free of legal
19 error and not supported by substantial evidence. Specifically, she argues the ALJ
20 erred by: (1) failing to properly evaluate the medical evidence, specifically the

1 opinions of examining doctor Kayleen Islam-Zwart, Ph.D., and non-examining
2 doctor Stephen Rubin, Ph.D.; (2) failing to treat Ms. Brennan's somatoform
3 disorder and borderline intellectual functioning as severe impairments at step two²;
4 and (3) failing to properly evaluate Ms. Brennan's own symptom testimony. ECF
5 No. 13.

6 **VII. Discussion**

7 **A. The ALJ properly evaluated the medical evidence, including the** 8 **opinions of Drs. Islam-Zwart and Rubin.**

9 **1. Legal Standard.**

10 The Ninth Circuit has distinguished between three classes of medical
11 providers in defining the weight to be given to their opinions: (1) treating
12 providers, those who actually treat the claimant; (2) examining providers, those
13 who examine but do not treat the claimant; and (3) non-examining providers, those
14 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th
15 Cir. 1996) (as amended).

16 A treating provider's opinion is given the most weight, followed by an
17 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the
18 absence of a contrary opinion, a treating or examining provider's opinion may not
19 be rejected unless "clear and convincing" reasons are provided. *Id.* at 830. If a

20 ² While Ms. Brennan does not formally list this among the issues in her introduction, she raises it in her argument, thus the Court will address it.

1 treating or examining provider's opinion is contradicted, it may only be discounted
2 for "specific and legitimate reasons that are supported by substantial evidence in
3 the record." *Id.* at 830-31.

4 The ALJ may meet the specific and legitimate standard by "setting out a
5 detailed and thorough summary of the facts and conflicting clinical evidence,
6 stating his interpretation thereof, and making findings." *Magallanes v. Bowen*, 881
7 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When rejecting a treating
8 provider's opinion on a psychological impairment, the ALJ must offer more than
9 his or her own conclusions and explain why he or she, as opposed to the provider,
10 is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

11 **2. Dr. Islam-Zwart.**

12 Dr. Islam-Zwart evaluated Ms. Brennan on three occasions: June 2011,
13 September 2011, and March 2012. AR 303-09, 342-58. At all appointments, Dr.
14 Islam-Zwart performed objective testing as well as documented subjective
15 statements from Ms. Brennan. *Id.*

16 At the June 2011 exam, Ms. Brennan scored 26 of 30 on the mini-mental
17 status exam. AR 306. Her full-scale IQ was recorded at 79, interpreted as
18 borderline intellectual functioning. *Id.* She had generally average scores otherwise.
19 AR 306-08. In addition to the testing, Dr. Islam-Zwart referred to multiple physical
20 ailments reported by Ms. Brennan, including some that are not medically

1 documented, such as seizures. AR 308. Dr. Islam-Zwart stated that Ms. Brennan
2 would be unable to work at that time, yet she also believed Ms. Brennan would be
3 able to obtain her GED and to succeed with vocational training and more stability
4 over her physical and psychological challenges. *Id.*

5 Despite Ms. Brennan reporting that she was much worse at the time of her
6 September 2011 evaluation, AR 346, she scored 30 out of 30 on her mini-mental
7 status exam and generally performed better on her other objective testing than in
8 June 2011, AR 349. Nevertheless, Dr. Islam-Zwart again noted that Ms. Brennan
9 would be unable to work and that her prognosis was dependent on a medical
10 evaluation. AR 350.

11 At her final evaluation with Dr. Islam-Zwart, Ms. Brennan was generally
12 successful again in her objective testing. She scored a 29 out of 30 on the mini-
13 mental status exam and fell within normal ranges otherwise. AR 356-57. Dr. Islam-
14 Zwart's impression was that Ms. Brennan still exhibited symptoms that would
15 preclude her from employment, but once Ms. Brennan was medically stabilized,
16 she would benefit from vocational training. AR 358.

17 ALJ Siderius gave little weight to Dr. Islam-Zwart's opinions. AR 35. The
18 ALJ reasoned that Dr. Islam-Zwart "placed great emphasis on [Ms. Brennan's]
19 presentation in those exams." *Id.* This is a reasonable interpretation, as the
20 objective testing results do not demonstrate the level of impairment that Dr. Islam-

1 Zwart references. AR 303-09, 342-58. Since the testing does not support Dr. Islam-
2 Zwart's opinion, the ALJ reasoned that she must have drawn heavily on Ms.
3 Brennan's subjective statements. AR 35 This is further supported to Dr. Islam-
4 Zwart's repeated references to Ms. Brennan's somatic preoccupation. AR 308,
5 350, 358.

6 An ALJ may properly discredit a doctor's opinion if it is largely based on
7 self-reports by a claimant when the claimant's credibility has been properly
8 discounted. *Morgan v. Comm'r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir.
9 1999); *see also infra* 17-19 (review of credibility determination). Based on the
10 inconsistency between the medical records, particularly Dr. Islam-Zwart's own test
11 results, the ALJ did not err by interpreting that Dr. Islam-Zwart's opinion that was
12 heavily influenced by Ms. Brennan's subjective symptom testimony. *See also*
13 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (finding that rejection
14 of doctor's opinion was proper when medical records were inconsistent with the
15 doctor's opinion regarding claimant's limitations). The Court finds no error.

16 **3. Dr. Rubin's opinion.**

17 Dr. Rubin testified as an impartial medical expert at the March 26, 2014,
18 hearing. AR 47-54. Dr. Rubin opined that Ms. Brennan would have issues with
19 absenteeism due to her chronic pain issues, but not due to her anxiety and
20

1 depression. AR 51-52. The ALJ afforded only some weight to Dr. Rubin's opinion.
2 AR 35.

3 When speaking of issues within his area of expertise, psychology, Dr. Rubin
4 was unable to point to legitimate barriers to Ms. Brennan's ability to work. AR 47-
5 51. In fact, he specifically noted that her anxiety and depression were not limiting
6 factors. AR 51-52. Additionally, he was unable to diagnose a somatoform disorder
7 from his review of the full record. AR 51. His sole reason for opining Ms. Brennan
8 would be precluded from sustaining a regular work week is absenteeism due to
9 pain, an area that he even admits is beyond his expertise. AR 51-52.

10 Dr. Rubin also noted that much of Ms. Brennan's challenges were the result
11 of a lack of drive. He noted that she was not actively looking for work. AR 52. Dr.
12 Rubin specifically disagreed with Dr. Islam-Zwart's finding that Ms. Brennan was
13 of borderline intellectual functioning and opined that Ms. Brennan is capable of
14 learning. *Id.* According to Dr. Rubin, Ms. Brennan was "not trying to do some of
15 these things that she would need to do." *Id.* This strongly influenced the ALJ's
16 decision, which is a rational interpretation the Court will not disturb. *See* Molina,
17 674 F.3d at 1111.

18 **B. Any error at step two was harmless.**

19 At step two in the five-step sequential evaluation for Social Security cases,
20 the ALJ must determine whether a claimant has a medically severe impairment or

1 combination of impairments. An impairment is found to be not severe “when
2 medical evidence establishes only a slight abnormality or a combination of slight
3 abnormalities which would have no more than a minimal effect on an individual’s
4 ability to work.” *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988) (quoting
5 SSR 85-28). Step two is generally “a de minimis screening device [used] to
6 dispose of groundless claims,” and the ALJ is permitted to find a claimant lacks a
7 medically severe impairment only when the conclusion is clearly established by the
8 record. *Webb v. Barnhart*, 433 F. 683, 687 (9th Cir. 2005) (quoting *Smolen v.*
9 *Chater*, 80 F.3d 1273, 1290 (9th Cir.1996)). Under step two, an impairment is not
10 severe if it does not significantly limit a claimant’s ability to perform basic work
11 activities. *Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir. 2001) (citing 20
12 C.F.R. § 404.1521(a)(b)).

13 Dr. Islam-Zwart diagnosed Ms. Brennan with somatoform disorder on three
14 occasions. AR 303-09, 342-58. This was defined as an “undifferentiated”
15 somatoform disorder, and Dr. Islam-Zwart repeatedly refers to Ms. Brennan as
16 being “somatically preoccupied.” *Id.* Likewise, on all three occasions, Dr. Islam-
17 Zwart found Ms. Brennan to have borderline intellectual function. *Id.* Ms. Brennan
18 asserts that these diagnoses should have been considered severe impairments at
19 step two. ECF No. 13 at 14.

1 There is no clear diagnosis of the somatoform disorder's effects on Ms.
2 Brennan. The record demonstrates it could be related to chronic pain, or it could be
3 manifested through seizures. In either manifestation, there would not be reversible
4 error.

5 Assuming that the somatoform disorder is manifested by chronic pain,
6 because the ALJ did account for pain in step four, this would be harmless error.
7 ALJ Siderius properly assessed Ms. Brennan's credibility regarding symptom
8 testimony, *see infra* 17-19, but still found that some pain would result from her
9 migraines and endometriosis. AR 31. The ALJ accounted for this pain in the
10 residual functional capacity and reserved Ms. Brennan to light work. *Id.* Thus, any
11 failure to specifically include a somatoform disorder as manifested by chronic pain
12 as a severe impairment would be harmless error.

13 Conversely, Dr. Lynne Jahnke testified that a seizure disorder was "the only
14 thing that could be considered a somatoform [disorder]" in the record. AR 30, 70.
15 Failure to include this seizure disorder was not in error, however, as the record
16 lacks objective evidence of a seizure disorder. Even Dr. Jahnke herself noted this.
17 AR 70. Ms. Brennan may have "pseudo seizures," according to Dr. Jahnke, but
18 nothing objective supports this, such as an EEG or written description of the
19 events. *Id.* In her decision, the ALJ echoed this and stated that there was "no EEG,
20 no documentation of a witnessed event," that Ms. Brennan "has never been

1 prescribed medication for this or referred for a further evaluation” and
2 “[i]mportantly, she continues to drive.” AR 30. Because the record doesn’t support
3 a seizure disorder, failure to include this at step two would not be in error.

4 With regard to Ms. Brennan’s borderline intellectual functioning, there is
5 dispute in the record about her actual intellectual capacities and her ability to learn,
6 AR 28, 52. Nevertheless, even if the condition was not specified as a severe
7 impairment at step two, the ALJ did account for any potential intellectual
8 challenges faced by Ms. Brennan. In the residual functional capacity, ALJ Siderius
9 limited Ms. Brennan to “simple, repetitive tasks with only ordinary production
10 requirements.” AR 31.

11 Because Ms. Brennan was found to have at least one severe impairment, this
12 case was not resolved at step two. Ms. Brennan does not assign error to the ALJ’s
13 finding at step three. Thus, if there was any error in the ALJ’s finding at step two,
14 it is harmless because all legitimate impairments, severe and non-severe, were
15 considered in the determination Ms. Brennan’s residual functional capacity. *See*
16 *Lewis v. Astrue*, 498 F.3d 909, 910 (9th Cir. 2007) (holding that a failure to
17 consider an impairment in step two is harmless error where the ALJ includes the
18 limitations of that impairment in the determination of the residual functional
19 capacity).

20 //

1 **C. The ALJ properly evaluated Ms. Brennan’s credibility.**

2 An ALJ engages in a two-step analysis to determine whether a claimant’s
3 testimony regarding subjective symptoms is credible. *Tommasetti*, 533 F.3d at
4 1039. First, the claimant must produce objective medical evidence of an underlying
5 impairment or impairments that could reasonably be expected to produce some
6 degree of the symptoms alleged. *Id.* Second, if the claimant meets this threshold,
7 and there is no affirmative evidence suggesting malingering, “the ALJ can reject
8 the claimant’s testimony about the severity of [his] symptoms only by offering
9 specific, clear, and convincing reasons for doing so.” *Id.*

10 When evidence reasonably supports either confirming or reversing the ALJ’s
11 decision, the Court may not substitute its judgment for that of the ALJ. *Tackett v.*
12 *Apfel*, 180 F.3d 1094, 1098 (9th Cir.1999). “General findings are insufficient:
13 rather the ALJ must identify what testimony is not credible and what evidence
14 undermines the claimant’s complaints.” *Lester*, 81 F.3d at 834. Here, the ALJ cites
15 numerous, valid reasons for the finding that Ms. Brennan’s subjective symptoms
16 were not entirely credible.

17 One significant issue concerns drugs. Drug-seeking behavior can
18 demonstrate a tendency to exaggerate pain.³ *Edlund*, 253 F.3d at 1157. During an

19 ³ Contrary to Ms. Brennan’s assertion, the ALJ need not find drug abuse to be
20 a severe impairment to affect a credibility determination. Ms. Brennan need
not have a demonstrated addiction that affects her ability to maintain
employment, the requirement at step two, to have valid questions raised about
her credibility, an entirely different analysis.

1 August 2012 emergency room visit at Whitman Hospital and Medical Center,
2 doctors suspected Ms. Brennan of drug-seeking behavior because the treating
3 doctor could not find “any injury or abnormality” and refused to provide strong
4 painkillers such as hydrocodone. AR 522-23. Further, the hospital made her sign
5 an acknowledgement that she had received documentation on “reducing
6 preventable ED visits,” which further raises suspicion regarding her visits. AR 525.
7 Likewise, at a visit with John Colver, PAC, on April 5, 2013, Ms. Brennan was
8 described as being “rather insistent on receiving medications” and “resistant to
9 recommended lifestyle changes.” AR 479. Ms. Brennan told Mr. Colver at this
10 visit that she felt physical therapy was exacerbating her symptoms and wished to
11 use medicinal treatment, AR 477, yet physical therapy records demonstrate that her
12 signs and symptoms were inconsistent with the testing performed and her mobility.
13 AR 504. Further, Ms. Brennan has a history of lying about drug use. *See* AR 336-
14 37 (Ms. Brennan denied drug use, but tested positive for marijuana.)

15 These are all acceptable reasons for the ALJ’s negative credibility
16 determination, but ALJ Siderius provides multiple others, including sporadic
17 treatment, inconsistent statements, and daily activities. In weighing a claimant's
18 credibility, the ALJ may consider many factors, including, “(1) ordinary techniques
19 of credibility evaluation, such as the claimant's reputation for lying, prior
20 inconsistent statements concerning the symptoms, and other testimony by the

1 claimant that appears less than candid; (2) unexplained or inadequately explained
2 failure to seek treatment or to follow a prescribed course of treatment; and (3) the
3 claimant's daily activities.” *Smolen*, 80 F.3d at 1284. ALJ Siderius provided
4 numerous, valid reasons for her credibility determination, and the Court finds there
5 was no error.

6 **VIII. Conclusion**

7 Having reviewed the record and the ALJ’s findings, the Court finds the
8 ALJ’s decision is supported by substantial evidence and free of legal error.

9 Accordingly, **IT IS ORDERED:**

10 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.

11 2. Defendant’s Motion for Summary Judgment, **ECF No. 18**, is
12 **GRANTED**.

13 3. The District Court Executive is directed to enter judgment in favor of
14 Defendant.

15 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
16 Order, forward copies to counsel and **close the file**.

17 **DATED** this 2nd day of February, 2017.

18 *s/Robert H. Whaley*
19 ROBERT H. WHALEY
20 Senior United States District Judge